

## Message Text

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ORIGIN EUR-12

INFO OCT-01 ISO-00 SCS-03 SCA-01 CPR-01 SSO-00 NSCE-00

INRE-00 USIE-00 CIAE-00 DODE-00 PM-03 H-02 INR-07

L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 /057 R

DRAFTED BY EUR/CE:GLRUECKERT:KP

APPROVED BY EUR: MR. HARTMAN

L/M:HSHAMWELL

SCA/SCS:AGISE

L/EUR:DSMALL

C:WSHINN

EUR/CE:DANDERSON

S/S:FVORTIZ

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O R 142202Z JUL 75

FM SECSTATE WASHDC

TO AMEMBASSY BERLIN IMMEDIATE

INFO USMISSION USBERLIN

AMEMBASSY BONN

S E C R E T STATE 165349

E.O. 11652: XGDS

TAGS: PFOR, CGEN, GE, US

SUBJECT: CONSULAR CONVENTION NEGOTIATIONS: SECOND ROUND  
NEGOTIATING INSTRUCTIONS

REF: A.) BERLIN 5887 B.) BERLIN 5978 C.) STATE 156833

1. THERE FOLLOWS A GENERAL DISCUSSION OF ISSUES WHICH WE  
WOULD EXPECT TO ARISE DURING THE SECOND ROUND OF CONSULAR  
CONVENTION NEGOTIATIONS IN BERLIN AND NEGOTIATING  
INSTRUCTIONS COVERING EACH POINT. DETAILED BACKGROUND  
AND TALKING PAPERS ON EACH SUBJECT WILL BE INCLUDED IN  
THE NEGOTIATING BOOKS WHICH DEPARTMENT TEAM MEMBERS WILL  
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CARRY WITH THEM TO BERLIN. DEPARTMENT TEAM MEMBERS ALSO  
WILL FURTHER ELABORATE US POSITIONS DURING THE PRE-  
NEGOTIATION PREPARATORY DISCUSSIONS IN BERLIN.

2. SUBSTANTIAL AGREEMENT ON TECHNICAL ISSUES WAS REACHED IN THE FIRST ROUND OF CONSULAR NEGOTIATION TALKS IN WASHINGTON FEBRUARY 10-20. HOWEVER, THERE REMAINED WIDE DIFFERENCES AS FOLLOWS:

A.) A GDR PROPOSAL TO DEFINE NATIONALITY PER SE, AND THEIR ATTEMPTING TO MAKE THIS A PREREQUISITE FOR A SEPARATE PROVISION THAT WOULD PERMIT CONSULAR PROTECTION OF DUAL NATIONALS UNDER CERTAIN CIRCUMSTANCES.

B.) THE QUESTIONS OF US PROPOSED LANGUAGE AVOIDING PREJUDICE TO OUR LEGAL POSITION THAT EAST BERLIN IS NOT PART OF THE SOVEREIGN TERRITORY OF THE GDR AS OPPOSED TO "UNDER THE JURISDICTION" OF THE GDR.

C.) THE PERIODS (I.E. NUMBER OF DAYS OR HOURS) FOR CONSULAR NOTIFICATION AND ACCESS.

### 3. DEFINITION OF NATIONALITY

A.) WE FULLY SHARE THE EMBASSY'S EVALUATION THAT THE KEY ISSUE FOR GDR IN THE NEGOTIATIONS IS A DEFINITION OF NATIONALITY WHICH THEY WANT FOR CLEARLY POLITICAL PURPOSES I.E. TO UNDERLINE THEIR CONTENTION THAT ONE GERMANY NO LONGER EXISTS AND HAS BEEN REPLACED BY TWO SEPARATE AND DISTINCT GERMAN STATES. THE GDR WILL HAVE BEEN ENCOURAGED BY ITS ABILITY TO GET NATIONALITY DEFINITIONS FROM THE AUSTRIANS, THE FINNS AND, AS A SPECIAL CASE FROM THE BRITISH, THROUGH PERSISTENT AND TOUGH NEGOTIATING TACTICS. THEY CLEARLY CONSIDER US THE MAIN TARGET, ALONG WITH THE FRENCH, AND WE EXPECT THEM TO MAKE A MAJOR EFFORT IN THIS ROUND TO GET US TO AGREE TO SUCH A DEFINITION.

B.) ANY AGREEMENT ON A NATIONALITY DEFINITION WOULD LEAD TO PROBLEMS WITH THE FRG, OUR MAJOR ALLY. MOREOVER, THE USG IN RECENT DECADES HAS NOT INCLUDED  
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DEFINITIONS OF NATIONALITY IN ITS CONSULAR AND OTHER CONVENTIONS. WE ARE CONVINCED THAT: (1) THE ABSENCE OF A DEFINITION DOES NOT AFFECT THE EFFECTIVE FUNCTIONING OF A TREATY, AS DEMONSTRATED BY THE FACT THAT THE GDR HAS NOT INCLUDED SUCH DEFINITIONS IN ITS AGREEMENTS WITH THE EASTERN EUROPEAN STATES AND THE VIENNA CONSULAR CONVENTION DOES NOT CONTAIN SUCH A DEFINITION; AND (2) THE ENTIRE SUBJECT IS TOO COMPLEX AND WOULD INVOLVE INTERNATIONAL LEGAL CONSIDERATIONS THAT ARE TOO COMPLICATED TO SPELL OUT IN A CONSULAR CONVENTION. US ARGUMENTATION FOR USE WITH THE GDR IS FURTHER ELABORATED IN BRIEFING BOOKS. ALSO INCLUDED IS A PAPER ON THE COMMITMENTS WHICH WE HAVE MADE TO THE

FRG ON CONSULAR REPRESENTATION OF GERMAN NATIONALS,

ALONG WITH TALKING POINTS ON HOW WE WOULD HANDLE A GDR NATIONAL WHO ASKS FOR FRG CONSULAR PROTECTION.

C.) WE REPEATEDLY TOLD THE GDR NEGOTIATORS AT THE FIRST ROUND THAT THIS IS A POINT OF PRINCIPLE FOR THE US GOVERNMENT ON WHICH WE DO NOT INTEND TO YIELD. THIS POINT SUBSEQUENTLY HAS BEEN REINFORCED ON SEVERAL OCCASIONS TO GDR AUTHORITIES HERE. THE NEGOTIATING TEAM HAS NO AUTHORITY TO AGREE TO THE DEFINITION OF NATIONALITY PROPOSED BY THE GDR OR TO NEGOTIATE AN ALTERNATE VERSION. ANY NEW GDR PROPOSALS ON THIS ISSUE SHOULD BE REFERRED TO THE DEPARTMENT FOR GUIDANCE.

4. THE STATUS OF BERLIN - DURING THE FIRST ROUND, WE PROPOSED TO THE GDR USE OF THE PHRASE "WITHIN THE JURISDICTION OF THE RECEIVING STATE" IN PLACE OF "IN THE RECEIVING STATE". WE HAVE AGAIN INCLUDED THIS LANGUAGE IN OUR DRAFT AND PROPOSE FOR NEGOTIATING PURPOSES TO MAINTAIN OUR POSITION, FOR THE TIME BEING, ON THIS ISSUE. HOWEVER, WE COULD EVENTUALLY YIELD ON THIS MATTER IF OTHER THINGS WORKED OUT TO OUR ADVANTAGE. WE SAID FOR THE RECORD, AT THE TIME OF ESTABLISHMENT OF DIPLOMATIC RELATIONS, THAT NOTHING IN OUR RELATIONS WITH THE GDR COULD EFFECT OUR RIGHTS AND RESPONSIBILITIES IN AND AROUND BERLIN. IF NECESSARY, WE COULD DEVISE A FURTHER DISCLAIMER SPECIFICALLY FOR THE CONSULAR CONVENTION  
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OR FIND SOME OTHER MEANS OF PROTECTING OUR LEGAL POSITION ON BERLIN. IF COURSE OF NEGOTIATIONS WARRANT IT, THE TEAM CHAIRMAN MAY INDICATE TO THE GDR THAT USG WOULD BE PREPARED TO LOOK AT ALTERNATE WORDING PROVIDED ALL OTHER ASPECTS OF THE CONSULAR CONVENTION ARE SATISFACTORILY RESOLVED. HOWEVER, WE BELIEVE IT BEST TO CONTINUE TO HOLD OUT ON THIS ISSUE DURING SECOND ROUND TO ENHANCE ITS ULTIMATE VALUE AS A CONCESSION.

5. CONSULAR NOTIFICATION AND ACCESS - WE HAVE PROPOSED NOTIFICATION WITHIN THREE DAYS, ACCESS WITHIN FOUR DAYS AND VISITATION AT LEAST EVERY 31 DAYS. IN ITS MOST RECENT DRAFT, THE GDR HAS NOT CHANGED ITS ORIGINAL PROPOSAL FOR FIVE DAYS NOTIFICATION AND EIGHT DAYS ACCESS, WITH VISITS ONCE EVERY TWO MONTHS. WE CONSIDER THAT THERE IS DELIBERATE NEGOTIATING FAT IN THESE GDR DRAFT PROVISIONS, WHICH ARE FAR LESS ACCOMODATING THAN THOSE ACCEPTED BY THE OTHER EASTERN EUROPEAN STATES,

INCLUDING THE SOVIETS, IN THEIR CONSULAR CONVENTIONS WITH US (COPIES OF OTHER EE CONSULAR CONVENTIONS WILL BE INCLUDED IN THE NEGOTIATING BOOKS.) WE HAVE MADE WHAT WE

CONSIDER A REALISTIC PROPOSAL BASED ON OUR EXPERIENCE IN OTHER WARSAW PACT COUNTRIES. THE NEGOTIATING TEAM IS NOT AUTHORIZED TO MAKE ANY CONCESSIONS CONCERNING OUR POSITION ON NOTIFICATION AND ACCESS PERIODS.

6. THERE ARE A CONSIDERABLE NUMBER OF OTHER TECHNICAL ISSUES TO BE WORKED OUT. AN ARTICLE BY ARTICLE COMPARISON OF THE GDR AND US SECOND DRAFTS PREPARED BY L WILL BE INCLUDED IN THE BRIEFING BOOKS. THE TEAM IS AUTHORIZED TO USE ITS JUDGEMENT IN NEGOTIATING THESE TECHNICAL ISSUES. HOWEVER, DEPARTMENT GUIDANCE MUST BE SOUGHT SHOULD THE GDR INTRODUCE POLITICAL INTERPRETATIONS OF ANY ARTICLE OF THE AGREEMENT.

7. TACTICAL CONSIDERATIONS - WE ASSUME FROM THE LENGTH OF TIME WHICH THE GDR HAS ALLOTTED FOR THE TALKS AND FROM THEIR FURTHER SUGGESTIONS TO THE EMBASSY THAT THERE BE BOTH MORNING AND AFTERNOON WORK SESSIONS, THAT THE GDR WILL NOT LET THE TALKS FLOUNDER ON THE NATIONALITY  
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ISSUE, BUT INTENDS TO MAKE FURTHER SUBSTANTIVE PROGRESS THIS NEGOTIATING ROUND. GDR SECOND DRAFT WHICH SHOWS AN EFFORT TO ACCOMMODATE THE US POSITION IN A NUMBER OF AREAS ALSO SUGGESTS THIS WILL BE THE CASE. WE SUSPECT THE GDR INTENDS DURING THIS ROUND TO MAKE A REALISTIC EFFORT TO BLEND THE TWO DRAFTS AND REACH AGREEMENT ON AS MUCH WORDING AS POSSIBLE. AT THE SAME TIME, WE WOULD EXPECT GDR CHIEF NEGOTIATOR, KLOBES, TO RETURN PERIODICALLY DURING THE TALKS TO THE NATIONALITY ISSUE, PROBABLY EMPLOYING AS NEGOTIATING TACTICS A CERTAIN AMOUNT OF THEATRICALS, SUCH AS CALCULATED RUDENESS, ANGER AND TEMPER TANTRUMS. THESE ARE BEST MET BY A COOL UNEMOTIONAL REITERATION OF THE US POSITION.

8. POSITION PAPER ON THE ISSUE RAISED REFTEL B CONCERNING THE 5TH AND 14TH AMENDMENTS WILL BE INCLUDED IN THE NEGOTIATING BOOKS AND THIS MATTER WILL BE DISCUSSED FURTHER WITH THE AMBASSADOR BY SHAMWELL DURING PRELIMINARY DISCUSSIONS AT THE EMBASSY.

9. THE DEPARTMENT TEAM MEMBERS ALSO WILL DISCUSS AT THAT TIME, VARIOUS PRACTICAL AND PROCEDURAL QUESTIONS RAISED PARA 9 REFTEL A. PROCEDURE FOLLOWED IN FIRST SESSION WAS FOR CHAIRMAN TO ASSUME OVERALL DIRECTION, INCLUDING OPENING AND CLOSING STATEMENTS, AND TO ENUNCIATE US POSITION ON ISSUES IN DISPUTE BETWEEN TWO TEAMS, TURNING TO SHAMWELL FOR INITIAL DETAILED PRESENTATION OF US POSITION AS EACH ARTICLE COMES UP FOR DISCUSSION. KLOBES DOES MOST OF THE TALKING ON THE EAST GERMAN SIDE. INGERSOLL

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 26 AUG 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** CONSULAR AGREEMENTS, NEGOTIATIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 14 JUL 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** greeneet  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1975STATE165349  
**Document Source:** ADS  
**Document Unique ID:** 00  
**Drafter:** EUR/CE:GLRUECKERT:KP  
**Enclosure:** n/a  
**Executive Order:** 11652 XGDS  
**Errors:** n/a  
**Film Number:** D750243-0155  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1975/newtext/t197507105/baaaapfn.tel  
**Line Count:** 217  
**Locator:** TEXT ON-LINE, TEXT ON MICROFILM  
**Office:** ORIGIN EUR  
**Original Classification:** SECRET  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:**  
**Previous Classification:** SECRET  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** greeneet  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 07 APR 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <07 APR 2003 by lzenbel0>; APPROVED <06 OCT 2003 by greeneet>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
06 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** n/a  
**TAGS:** PFOR, CGEN, GC, US  
**To:** BERLIN INFO USBERLIN  
BONN  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006